

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 Mitchell Sweigart & Patricia Ray h/w
 1254 Madison Drive
 Yardley, PA 19067

(b) County of Residence of First Listed Plaintiff Bucks
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Kardos, Rickles, Hand & Bidlingmaier
 626 S. State Street
 Newtown, PA 18940 (215) 968-6602

DEFENDANTS

Central Garden & Pet Supply Co., and Antonio Rios, Jr.

County of Residence of First Listed Defendant Cullman
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1332

Brief description of cause:

Personal Injury with Jurisdiction based on diversity of citizenship

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
 150,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/13/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Mitchel Sweigart, 1254 Madison Dr., Yardley, PA 19067

Address of Defendant: Central Garden, etal. 2210 Industrial Dr., SW, Cullman. AL 35055

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☒ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION


(Check Appropriate Category)

I, Clifford D. Bidlingmaier, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: July 13, 2015


Attorney-at-Law


84627

Attorney ID.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: July 13, 2015


Attorney-at-Law

84627

Attorney ID.#

KARDOS, RICKLES, HAND & BIDLINGMAIER

By: Clifford D. Bidlingmaier, III, Esquire

Attorney for Plaintiffs

Identification No. 84627

626 South State Street

Newtown, PA 18940

215-968-6602

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MITCHEL SWEIGART &

PATRICIA RAY, h/w

1254 Madison Drive,

Yardley, Pennsylvania 19067

Plaintiffs,

vs.

CENTRAL GARDEN & PET SUPPLY, Co.

2210 Industrial Drive SW

Cullman, Alabama 35055

&

ANTONIO RIOS, JR.

451 15th Avenue

Paterson, New Jersey 07504

Defendants,

NO.

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

COMPLAINT

JURISDICTION

1. Jurisdiction in this action is based on diversity of citizenship and is conferred upon this Court by the provisions of 28 U.S.C. Section 1332 (diversity of citizenship), in that the matter in controversy exceeds the sum and value of Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs, and the action is between citizens of a State and citizens or subjects of a foreign state.

PARTIES

2. Plaintiff Mitchel Sweigart is an adult individual residing at 1254 Madison Drive, Yardley, County of Bucks, Commonwealth of Pennsylvania.

3. Plaintiff, Patricia Ray, is the wife of Plaintiff Mitchel Sweigart, residing at 1254 Madison Drive, County of Bucks, Commonwealth of Pennsylvania.

4. Defendant Central Garden and Pet Supply, Co. is, upon information and belief, a foreign corporation organized and existing under the laws of the State of Delaware. Said Defendant maintains corporate offices in the State of California, and maintains a place of business at 2210 Industrial Drive SW, Cullman, State of Alabama.

5. At all times germane hereto, Defendant Central Garden and the owner of a 2015 Freightliner truck bearing Indiana license plate # 2259123.

6. Defendant, Antonio Rios, Jr. is an adult individual residing at 451 15th Avenue, City of Paterson, State of New Jersey.

7. At all times relevant herein, Defendant, Antonio Rios, Jr. acted as an agent, employee, and/or servant of Defendant, Central Garden and Pet Supply, Co.

8. Defendant Rios acted with the express and/or implied authority of Defendant, Central Garden and Pet Supply, Co., and at all times material hereto was in the direct scope of his employment.

9. At all times material hereto, Defendant, Central Garden and Pet Supply, Co., operated a business that required transportation and having significant contacts with the forum State of Pennsylvania.

CAUSE OF ACTION

10. On or about September 11, 2014, at approximately 2:35 P.M, Plaintiff, Mitchel Sweigart was operating his 2004 Aura TL vehicle bearing Pennsylvania license plate FMW8324, travelling in the right eastbound lane of SR 276, Whitemarsh Township, County of Montgomery and Commonwealth of Pennsylvania in a safe, lawful manner.

11. At the above time and place, Plaintiff was caused to suffer serious and permanent injuries when Defendant, Antonio Rios, Jr., was operating the aforesaid Freightliner eastbound in the center lane of SR 276 when traffic ahead began to slow, and the Defendant was unable to stop in time to avoid a collision and swerved into the right lane striking the rear of Plaintiffs vehicle.

12. As a direct result of the impact described above, Plaintiff Mitchel Sweigart sustained serious personal injuries, damages, and losses as hereinafter described.

COUNT ONE

MITCHEL SWEIGART vs. RIOS, JR.

13. Paragraphs 1 through 12 of this Complaint are hereby incorporated by reference as if same were set forth herein at length.

14. The aforesaid collision was directly and proximately caused by the negligence, carelessness and/or recklessness of Defendant Antonio Rios, Jr., *inter alia*, the following:

- a) Failure to keep a proper lookout;
- b) Failure to observe the location, distance, and speed of the vehicles on the roadway;
- c) Negligently maintaining, controlling and operating said vehicle;

- d) Operating his vehicle in disregard for the rules of road, ordinances of the County and statutes and regulations of the Commonwealth of Pennsylvania;
- e) Failure to stop;
- f) Failure to properly judge the speed, distance and time of vehicles approaching;
- g) Striking Plaintiff's vehicle;
- h) Failure to exercise due care under the circumstances;
- i) Failure to use due and reasonable care for the rights and safety of others under the circumstances;
- j) Operating the vehicle at an excessive rate of speed under the circumstances;
- k) Failure to observe Plaintiff's vehicle, which was in plain view;
- l) Failure to have vehicle under proper control so as to avoid striking Plaintiff's vehicle;
- m) Failure to be attentive;
- n) Was negligent as a matter of law; and
- p) Such other acts of negligence as shall become apparent through

discovery or at the time of the trial of this matter.

15. As a direct and proximate result of aforesaid accident, Plaintiff Mitchel Sweigart has suffered serious mental and physical injuries to his head, neck, and back, including but not limited to; traumatic brain injury, concussion, fracture of C-2 and herniated disc C-8, chronic headaches, neck pain, cervical sprain, cervical strain, stroke,

knee abrasions, shoulder abrasions, hand numbness, post-traumatic stress disorder, and a shock to his nerves and nervous system causing pain, suffering and anxiety.

16. As a further direct and proximate result of aforesaid accident and by reason of the injuries sustained, Plaintiff Mitchel Sweigart has endured great physical pain and suffering, mental anguish and humiliation, and will be caused to continue to suffer same for an indefinite period of time in the future.

17. As a further direct and proximate result of the aforesaid accident and by reason of the injuries sustained, Plaintiff Mitchel Sweigart has incurred great medical expenses for related care and treatment, and may be required to expend additional sums of money for the same purpose in the future.

19. As a further direct and proximate result of the negligence, carelessness and recklessness of the Defendants as described in the aforesaid paragraphs herein, Plaintiff Mitchel Sweigart has lost the ability to enjoy life to the fullest degree, has been deprived of life's simple pleasures, and has been prevented from pursuing his normal daily activities, all of which are to his great detriment and loss.

20. As a direct and proximate result of Defendants negligence the Plaintiff, Mitchel Sweigert, has incurred and will continue to incur lost wages and earnings as a result of the happening of the occurrence; and is permanently partially disabled as a result of the happening of the occurrence, and was otherwise injured and damaged, for which this claim is made.

WHEREFORE, Plaintiff Mitchel Sweigart demands judgment against the Defendants jointly and severally for damages in excess of One Hundred and Fifty-

Thousand (\$150,000) Dollars, together with attorney's fees, interest, costs, delay damages and other such relief as this Honorable court deems appropriate.

COUNT TWO

MITCHEL SWEIGART vs. CENTRAL GARDEN & PET SUPPLY CO.

21. Paragraphs 1 through 20 of this Complaint are hereby incorporated by reference as if same were set forth herein at length.

22. At all times material hereto, Defendant, Antonio Rios, Jr. was the agent, servant, employee and/or representative of Defendant, Central Garden & Pet Supply Co. engaged in his duties on behalf of said party, and in the course and scope of his employment.

23. Defendant, Central Garden & Pet Supply Co. is thereby liable for Plaintiff's injuries resulting from the negligent and reckless conduct of their agent, servant, employee and/or representative Defendant Antonio Rios as described above.

WHEREFORE, Plaintiff Mitchel Sweigart demands judgment against the Defendants jointly and severally for damages in excess of One Hundred and Fifty-Thousand (\$150,000) Dollars, together with attorney's fees, interest, costs, delay damages and other such relief as this Honorable court deems appropriate.

COUNT THREE

PATRICIA RAY vs. CENTRAL GARDEN & PET SUPPLY CO.

24. Paragraphs 1 through 23 of this Complaint are hereby incorporated by reference as if same were set forth herein at length.

25. At all times material hereto, Plaintiff, Patricia Ray, was the wife of Plaintiff, Mitchel Sweigart.

26. Solely as a result of the aforesaid negligence of Defendants, Plaintiff Patricia Ray, has been deprived of the services, comfort, society, companionship and conjugal affection of her husband, Mitchel Sweigart, and will be so deprived for the indefinite future to great her pain, suffering, damage and loss.

WHEREFORE, Plaintiff Patricia Ray demands judgment against the Defendants jointly and severally for damages in excess of One Hundred and Fifty-Thousand (\$150,000) Dollars, together with attorney's fees, interest, costs, delay damages and other such relief as this Honorable court deems appropriate.

Respectfully submitted,

BY:


CLIFFORD D. BIDLINGMAIER, III, ESQUIRE
Attorney for Plaintiff

Dated: 7/13/15